

Service Date February 3, 1976

BEFORE THE UTILITY DIVISION
DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER OF the motion)	UTILITY DIVISION
by the MONTANA POWER COMPANY, for)	
temporary approval of natural gas)	DOCKET NO. 6348
rate increase subject to rebate.)	ORDER AFTER DENIAL
)	OF PETITION FOR
)	REHEARING
		ORDER NO. 4220A

On September 23, 1975, The Montana Power Company (Applicant filed a Motion, supported by an affidavit of one of its counsel, with the Department of Public Service Regulation, Montana Public Service Commission, requesting said Commission to immediately issue a temporary Order authorizing the Applicant to increase its rates and charges for natural gas services pending a hearing and final decision on Applicant's rate increase request in this Docket No. 6348, which Motion stated that it was made pursuant to Sec. 70-113, R.C.M. 1947, as amended by Ch.115, Laws of Montana 1975. On October 2, 1975, at 1:30 p.m., hearing was had on said Petition; at which hearing Robert D. Corette, J.J. Burke & Mark CLARK appeared as attorneys for Applicant; William E. O'Leary and Geoffrey L. Brazier appeared as attorneys for Consumer Counsel; and Cresap S. McCracken appeared as attorney for Great Falls Gas Company. No other persons or attorneys appeared save all of the Commissioners and their attorney Russell L. Doty, Jr.. Whereupon the Applicant, without presenting sworn testimony of witnesses to substantiate the assertions in their Motion or offering up any witnesses for cross examination as to the matter contained in exhibits attached to its Motion, delved into argument by and through its attorney as to the necessity for the relief requested.

Thereafter, the Consumer Counsel offered argument against granting such Petition and the said Great Falls Gas Company stated in substance that it only wanted a raise if Applicant got one. Whereupon the Commission asked various questions and requested certain other information particularly as to the "take or pay" clauses in the Canadian purchase contracts, which information was furnished prior to October 31, 1975. Thereafter, and on the 31st day of October, 1975, after having considered the arguments given herein on October 2nd; the testimony given by application to that date in the public hearing on Docket No. 6348, particularly testimony and cross examination thereon as to the overall financial condition of Applicant; the testimony showing that Applicant owned 241 billion cubic feet of proven gas reserves in the Aden area in Canada, which is included in Applicant's rate base in this matter; the evidence that said rate base gas was available to Montana ratepayers at a cost of approximately 55.53 cents per mcf, whereas gas purchased from Canadian producers at Aden costs 1.60 per million Btu's, the evidence that the Canadian Energy Board Order had theretofore reduced the Canadian export license at Aden from 20 billion cubic feet per year to not more than 10 trillion cubic feet per year; had studied the "take or pay" clauses in the Canadian producers' contracts, particularly pertaining to provisions authorizing certain delays and future recoupment of payments made by Applicant for gas paid for, but not taken thereunder, the Commission made its Order on October 31, 1975, granting Applicant a temporary increase of its residential and non-residential rates in the amount of \$6,510,791; whereupon Applicant made application to the Supreme Court of the State of Montana for an Order for Writ of Supervisory Control or such other Order as may be appropriate, which matter was set for hearing and heard by the Supreme Court on the 14th day 6 of November, 1975, and an Order was duly given and made

thereon on the 30th day of December, 1975, rehearing of which was denied on the 19th day of January, 1976, NOW THEREFORE the Commission being advised in the matter, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Notice of the October 2, 1975, hearing was served upon all parties to Docket No. 6348 by mailing a copy thereof, postage prepaid, to those persons listed on the Commission's service list, on or about September 23, 1975.

2. The hearing commenced at 1: 30 p.m. (MDT), on October 2, 1975, in the conference room of the Montana Public Service Commission at 1227 11th Avenue, Helena, Montana.

3. The Applicant is a natural gas public utility serving customers within the State of Montana. Applicant's rates for natural gas service are subject to the jurisdiction of this Commission.

4. Commencing on August 1, 1975, by orders of the Canadian government, the border price for gas exported from Canada was increased from \$1.00 to \$1.40 per million Btu's, and on November 1, 1975, by orders of the Canadian government, the border price for gas exported from Canada was increased from \$1.40 to \$1.60 per million Btu's and the unit price of Canadian royalty gas was approximately 55 53 cents per Mcf.

5. Applicant contended before the Commission that at the rates in effect on September 23, 1975, Applicant's property would be subject to confiscation without due process of law, guaranteed by the Federal and State Constitutions, and that at such rates Applicant would sustain a loss during the test

year 1975 of \$13,031,968 due to the maximum impact of increased purchased gas cost and royalty expenses.

6. The temporary rate relief increase requested by Applicant for its residential, non-residential and other utility customers, in order to correspond with the increased cost of Canadian gas, was and is in the amount of \$11,646.283.

7. That the Supreme Court of the State of Montana, in Case Number 13207, in its Order duly given or made therein on December 30, 1975, recites and orders that the Commission in considering the facts when making its determination and Order, of October 31, 1975:

"1) Disallowed "pass through" costs to the extent that they may become confiscatory, in violation of the constitutional prohibitions against taking property without due process of law, and

2) That this constituted arbitrary action and unjustly denies petitioner the 'pass through' costs.

Therefore, we order that the Commission Order of October 31, 1975, No. 4220, be set aside and that "2) Petitioner's Motion for temporary approval of a gas increase to correspond with the increased cost of Canadian gas and subject to the final decision of the Commission to rebate, be granted".

CONCLUSION OF LAW

1. The Commission has a duty to insure that utilities under its jurisdiction provide reasonably adequate service at rates which are just and reasonable to the consumer and are not confiscatory of the utilities' property. Montana (R.C.M.

1947, 70-105)

2. The Commission may temporarily approve an increase pending a hearing and final decision, with the additional revenues collected subject to rebate (R.C.M. 1947, 70-113)

3. In view of the large increases in the price of Canadian purchased gas and Canadian royalty gas, some increase in rates for Applicant's natural gas distribution service are justified.

4. The decision of the Supreme Court of the State of Montana, in Case No. 13207, as supplemented by its Order in said case dated January 19, 1976, controls the Department of Public Service Regulation, Public Service Commission of the State of Montana, in said Case Number 13207.

5. In view of Conclusion Number 4 hereof, the temporary rate increase requested by the Applicant on September 23, 1975, in the amount of \$11,646,283 should be granted, subject to the rebate provisions of Montana law.

O R D E R

1. The Montana Power Company shall file monthly reports indicating its sources and volumes of purchased gas and royalty gas.

2. Applicant shall be granted a temporary increase in rates which shall be related directly to the alleged increased cost of gas, not to exceed 23 however, over a year's time, an amount in the sum of \$11,646, 283 for its residential, nonresidential and other utility customers. Applicant shall file within ten (10) days of this Order, a tariff reflecting

this allowance.

3. This temporary increase shall be spread equally to Applicant's residential, non-residential and other utility customers. Said increase was effective and operative on December 30, 1975.

4. This is a temporary Order. In this regard the Commission, as a matter of policy, will consider temporary requests only in conjunction with full rate case hearings such as that in progress in Docket No. 6348.

5. The additional revenues resulting from this interim Order will be subject to rebate plus interest at the rate of return granted the Company in the final order, if the Commission determines at the end of the general rate case that lower rates should become effective.

6. This temporary Order shall be effective only until the initial final order is made, in Docket No. 6348, and shall not be in effect during any appeal therefrom, unless stayed by an Order of a Court of proper jurisdiction upon special request for an Order authorizing such a stay.

DONE IN OPEN SESSION at Helena, Montana, January 19, 1976.

BY ORDER OF THE PUBLIC SERVICE COMMISSION:

GORDON E. BOLLINGER, Chairman

P.J. GILFEATHER, Commissioner

JAMES R. SHEA, Commissioner

THOMAS G. MONAHAN, Commissioner

GEORGE TURMAN, Commissioner

ATTEST: A True Copy

Gail E. Behan, Secretary

(SEAL)